



E43.3

.u59



SLAVERY IN THE TERRITORIES.

---

## DEBATE

ON

THE POWER OF CONGRESS TO ESTABLISH OR PROHIBIT SLAVERY  
IN THE TERRITORIES OF THE UNITED STATES ;

IN THE HOUSE OF REPRESENTATIVES, JANUARY 17, 1856.



---

WASHINGTON:  
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.  
1856.

E 433  
- 659

D. C. 10/6/11

## SLAVERY IN THE TERRITORIES.

---

Mr. STEPHENS. I ask the indulgence of the House but for a few moments. I wish to make some inquiries of the honorable gentleman from Tennessee, [Mr. ZOLLICOFFER,] in reference to some remarks made by him in the debate yesterday. He is reported as having said:

"My opinion is, that the advocates of the constitutional power of Congress to establish or prohibit slavery in the territory of the United States—though they may live in the South, though they may profess to be the advocates of the constitutional rights of the South—are doing to the South more damage, and are more dangerous, than the Abolitionists of the North."

I wish to ask the gentleman from Tennessee what he means by that declaration; and also if he knows any gentlemen, or any persons, at the South who *advocate* the constitutional power of Congress to prohibit slavery in the Territories?

Mr. ZOLLICOFFER. I am pleased that the gentleman from Georgia has put the question to me, and I shall be obliged to him, and to the House, not to confine me strictly to a categorical answer. My conviction is, that the theory that the Congress of the United States has the constitutional power to draw a geographical line through the public territories, and to say where slavery shall exist, and where slavery shall be prohibited forever, is a theory giving to Congress a power which the Constitution has never conferred upon this body. My opinion is, that this theory has done more damage to the constitutional rights of the southern States of the Union than the open warfare of northern Abolitionists upon the institutions of the South. I do not mean to be understood as saying, that gentlemen who entertain this theory of the Constitution are less patriotic than gentlemen who believe as I do, that the Constitution does not confer that power; but my position is, and what I wish to be understood as saying is, that the *theory* is an erroneous and most dangerous one. And here let me remark, that many gen-

tlemen of the South, whose patriotism I have never doubted, have fallen into a belief of this theory; and some gentlemen have gone so far as to *demand* that the Congress of the United States should mark out the line dividing the territory between the North and the South, and thereby determine forever where slavery should go, and where it should be prohibited. But I am gratified that many of those gentlemen have changed their opinions.

The gentleman from Georgia [Mr. STEPHENS] asks me to point him to a man of the South who entertains such opinions. I would say to him that my understanding is, that the gentleman from Georgia himself [Mr. STEPHENS] has, upon the floor of this House, maintained, with regard to the territory acquired from Mexico, that unless Congress would extend the Missouri compromise line to the Pacific—would, by a geographical line, divide the territory, and determine *forever* where slavery should exist, and where it should be prohibited, that he had no other alternative than to return the territory to Mexico. "Let us keep our money which is to be paid for it," said he, "and let Mexico keep her provinces and her people." That was his position, as I understood it. I am gratified that the gentleman who then warred against the principle of "non-intervention" has changed his opinion, and now stands before the country as an advocate of the principle of "non-intervention" by the Federal Government with the territories of the Union, upon the subject of slavery. My opinion is, that the new States, to be carved out of the public Territories, when they shall be admitted into this Union, should come in upon an equal footing with the old States, under the plain letter of the Constitution—that they should come in full-fledged, with all power for determining their fundamental and constitutional laws, as is conceded to the old States of the Union. I repeat, I do not mean to say that gentlemen who entertain the opinions I ascribe to

him are less patriotic than those who embrace the principle of non-intervention; but I mean to say that *such opinions* are more dangerous to the South, particularly when presented by southern gentlemen, than when presented by open and avowed Abolitionists.

Mr. STEPHENS. The gentleman is mistaken in attributing to me any such position or opinions as he seems, from the record he refers to, inclined to assign me. I did not then, or ever, advocate the constitutional power in Congress to prohibit slavery in the Territories; but I maintained that upon the principle of compromise I should be satisfied with nothing but a fair division of this Territory. I have always, and I do now, maintain, as an original question, that the Territories of the United States are the common domain, in which the people of all the States have an equal interest; and that the people of the States who choose to settle them should determine their domestic institutions for themselves as they please when they come to form their State constitutions. But when the North would not permit the South to enjoy all in common, to colonize all in common, and to settle all in common, without restriction, then only on the principle of division, as an alternative, would I compromise the question at all. Now, sir—

Mr. ZOLLICOFFER, (interrupting.) Will the gentleman from Georgia allow me to read his declared opinions?

Mr. STEPHENS. Not now. I know all about my declared opinions. I do not wish to have my time now taken up by reading.

Mr. ZOLLICOFFER. Very well, sir.

Mr. STEPHENS. If the gentleman has anything there in contradiction to what I say I will, when I get through, hear him read it; but I do not wish now to be diverted from other points. The gentleman stated to the House, when he began, that those gentlemen who voted for the Missouri line—the geographical line—where slavery might exist, and where it should not, were more dangerous to the interests of the people of the South than the Abolitionists of the North. Does he believe that those men who in 1820—when the South was pressed to the wall—when they took that measure only as an *alternative*—when the North insisted on having every foot of the country, and when, only by a small majority, the South reluctantly took this line, in lieu of total prohibition—does he believe, I ask, that those men were more dangerous to the South than the Abolitionists of the North were? Does he say that your Lowdenses and Clays, with a majority of the Southern members, were more dangerous to the rights and interests of the South and the peace of the country than the avowed Abolitionists?

Mr. ZOLLICOFFER. Perhaps the gentleman does not understand me. I again repeat, and I wish to be properly understood, that this *theory* has done more damage and is more dangerous to the constitutional rights of the South than the open efforts of Abolitionists. Many patriotic men at the period to which the gentleman alludes, fell, as I believe, into the error in submitting to what they regarded as the smaller of two evils, namely: in admitting that the Federal Government has the power to bind the States which are yet to be formed out of the Territories of the United States in the character of their domestic institutions forever.

I feel that that *theory* is more dangerous to the South than the open warfare of the Abolitionists.

Mr. STEPHENS. Then I wish the gentleman from Tennessee to state what *theory* he means? Does he know any southern man, in the beginning, in the middle, or down to the present, or at any time in the progress of this controversy, who ever entertained *such a theory* as he speaks of? And does he know of any southern man who ever voted for a division of the public domain, except as an alternative? Did the offer to divide even originate with southern men? Has it ever been defended by southern men, except as an alternative?

Mr. ZOLLICOFFER. If the gentleman from Georgia will allow me, I will read an extract from his speech in 1850, on the subject?

Mr. STEPHENS. Now, sir, you may read it.

Mr. ZOLLICOFFER. On the 13th of June, 1850, the honorable gentleman from Georgia is reported, in the *Globe*, as saying:

"I have from the beginning been, as the gentleman from Mississippi says he is, in favor of the *extension of the Missouri compromise line*, or some other fair and just *division of the Territory*. But I want no division which will not give as ample protection and security to the South in the enjoyment of her portion, as it does to the North. The extension of the Missouri compromise, without the recognition of slavery south of that line and all necessary protection, would, in my opinion, be a perfect *mockery of right*, just as much so as the doctrine of '*non-intervention*.' This was my position two years ago upon this floor, and upon which I then declared I should stand or fall. I held that, upon the acquisition of these Territories, their government *devolved upon Congress*, and that it was the *duty of Congress* to pass all necessary laws for the fair and equal enjoyment of them by all the people of the United States, or such of them as might go there with their property of every description.

"As a difference of opinion exists between the North and South upon the subject of slavery, I thought, and still think, that for the purpose of such just and equal enjoyment a *division of the Territory* would be best. *That Congress had power to pass all such laws I never doubted*—indeed I was amazed at the position of those who claimed the constitutional right to carry and hold slaves there, and yet denied to Congress the power to pass laws for the protection of these rights. *The doctrine of 'non-intervention' denied that power.*"

Mr. STEPHENS. Yes, sir; and I indorse every word of that now.

[Here the hammer fell.]

Mr. STEPHENS. I ask the indulgence of the House to permit me to conclude my remarks.

The CLERK. There being no objection the gentleman is at liberty to proceed.

Mr. READE. Will the gentleman from Georgia allow me to ask him a single question, so that I may be sure I understand him correctly?

Mr. STEPHENS. Certainly.

Mr. READE. I want to ascertain whether I understood the gentleman from Georgia, in the extract just read by the gentleman from Tennessee, to have spoken of the principle of non-intervention as a *mockery*? I want to understand that extract correctly. Did the gentleman from Georgia speak of the principle of non-intervention as a *mockery*?

Mr. ZOLLICOFFER. That is what I understand his language to amount to.

Mr. STEPHENS. One at a time—and one thing at a time, Mr. Clerk. What I wish the House right here to understand clearly is this: "*Non-intervention*," as the word was used at that time by me, was a term altogether different in its meaning, and import, and practical effect from the same word as it has more recently been used on this



floor and elsewhere. At the time of the acquisition of Mexican territory, there were local laws—as I understood them—prohibiting slavery. I held it to be the duty of Congress then to annul those laws, and to open up all the territory to the free and unrestricted colonization of the people of all the States of the Union. There was then already “intervention” against us. Non-intervention over that territory at that time would have been exclusion, particularly in connection with the idea that the people there should never be permitted to change the existing *status*, as I showed in that speech from which the gentleman has read an extract, or some other, or at least thought I showed. This was my opinion upon a question, however, on which southern men differed. But it is proper for the gentleman from North Carolina [Mr. READE] and the House to understand the import with which the term “non-intervention” was used by me in that speech. It was that “non-intervention” which, in my judgment, would have absolutely excluded a portion of the people of the Union from a just and fair participation in the use of common territory, and I wished all to be equal participators therein.

Now, sir, in that speech from which the gentleman has read, I was speaking of a settlement of this controverted question on the principle of division, as the people of the North could not in justice be permitted to take the whole territory—every foot of it, North, South, East, and West, which they were claiming, and seemed determined to have. My theory was, and the whole southern theory was, as I understood it, as an original question, to leave the whole territory free to colonization by all alike, and without restriction anywhere. But, sir, when we were forced to the wall, when we were outvoted by a large majority from the North, when we had no hopes of getting that theory of ours realized, then we were willing, as I said, in consequence of this sectional disagreement, as an alternative, to have the territory divided with the same guarantee against the previous intervention against us on one side of the line to the people of the South, as there was on the other side to the people of the North.

The House will indulge me also in another idea. In the speech to which the gentleman from Tennessee has alluded, he quotes me as having expressed astonishment as to the power of Congress to do what I thought ought to be done; that is, to institute Governments for the Territories, and to effect what I desired. Now on this subject, in both aspects of it, there was a division of sentiment as well North as South. I held that Congress had power to govern or to provide governments, and to pass such laws as were necessary to give security to slave property, which some, holding the doctrine of “non-intervention,” as then used and understood, denied. I was amazed at some gentlemen who held that by virtue of the Constitution alone we could hold slaves in the Territories, and yet denied the power to protect them. I hold the same sentiments now. I held that it is the duty of Congress to protect slave property as well as other property in the common territory of the United States, just as it might protect any other kind of property. That is what I held to be the power and duty of Congress. I did not hold that it had

the unqualified power to prohibit. Now I ask the gentleman again, does he know any man in the southern country who advocates, or even defends, the unlimited constitutional power of Congress to prohibit slavery in the Territories?

Mr. ZOLLICOFFER. I would ask the gentleman from Georgia, whether in 1848 he did not, on this floor, take the position, with reference to the territory acquired from Mexico, that there were but two courses to pursue; that there were but two alternatives with him. I ask him if he did not state, that unless the Federal Government extended the Missouri compromise line to the Pacific ocean, so that slavery should exist forever on one side of the line, and should not exist on the other, his only alternative was to return the territory to Mexico? I ask him if he did not demand that Congress should not merely protect slavery in the territory on one side of a geographical line, but should prohibit it on the other? I ask him if he did not demand that, and demand it as the only alternative to the returning the territory to Mexico?

Mr. STEPHENS. Only, Mr. Clerk, by way of compromise.

Mr. ZOLLICOFFER. Ah!

Mr. STEPHENS. It was only as a compromise that I would agree to or demanded the extension of the Missouri line, recognizing and protecting slavery south of the line as well as excluding it north. This was the only plan of division, itself an alternative, that I would agree to. I was then in favor of running that line through to the Pacific—not as an original proposition, but as an alternative—to settle the question upon some principles of justice, as the South and North differed upon slavery, and the North, so far from letting the South have the free common use of all, seemed bent upon not letting her have any. But the North would not agree, then, even to that—they would not divide. An overwhelming majority in this House were opposed to it. On the 15th day of January, 1847, a large, an overwhelming majority in this House repudiated the adoption of that line by way of settlement—a line, or a principle rather, which the South was forced to adopt in 1820, not as a theory of her own, but as her only alternative.

Now, Mr. Clerk, I voted in 1848, as all the men from the South upon this floor voted, to extend that line to the Pacific coast. It was no measure of our choice.

Mr. ZOLLICOFFER. I suppose I do not misunderstand the gentleman from Georgia. I now understand him to express the opinion that the Federal Government has no constitutional power to restrict slavery in any of the Territories of the United States; yet, in a spirit of compromise, he was willing, in this instance, that the Constitution should be violated in the measure proposing to restrict slavery in half the territory, and that the Federal Government should thus do what the Constitution itself prohibited.

Mr. STEPHENS. No, sir, I hold no such doctrine. The gentleman can assign me no such position. I voted to extend the line as an alternative; but I did not hold, nor do I now hold, that I violated the Constitution in thus voting. And I want to know of the gentleman from Tennessee if he would not have voted for the extension of that line if he had been here? When the

whole South united in agreeing to extend the line as an alternative, by way of compromise, in 1848, I want to know of the gentleman from Tennessee—and I call the attention of the House to his answer—whether he would not, if he had been here, have voted with the South for that extension? Would the gentleman, or would he not?

Mr. ZOLLICOFFER. Mr. Clerk, it will be remembered that when this little sparring between the gentleman from Georgia and myself commenced—

Mr. STEPHENS. I do not yield to the gentleman, except to answer my question.

Mr. ZOLLICOFFER. I will give the gentleman a direct answer.

Mr. STEPHENS. Very well; go on.

Mr. ZOLLICOFFER. I say it will be remembered that this little sparring between the gentleman from Georgia and myself grew out of the fact, that when the gentleman from Pennsylvania, [Mr. FULLER,] for whom I have been voting as a candidate for Speaker, defined his position the other day—when he announced himself as occupying the high national position which he did, the gentleman from Georgia rose and complimented him upon having revised his opinions and corrected his position before the House and country. I confess, sir, that I could not help supposing that those compliments were ironically tendered, and I stated, in reply, that it would be well to remember that other gentlemen had corrected their positions besides the gentleman from Pennsylvania.

And now, sir, in reply to the interrogatory of the gentleman from Georgia, I have to say that from the day of that crisis in 1850, when I saw what I saw in the Nashville Southern Convention, as it was called—when I saw that body demanding the extension of the Missouri compromise line to the Pacific—when I saw that body advocating the exercise by the Federal Government of the power to prohibit and permit the extension of slavery upon the respective sides of a certain geographical line through the Territories—belonging to the Government, a power that I felt was not delegated by the Constitution—when I saw that position taken by the extreme men of the South, sir, I planted myself upon the position, that the *people* of the Territories, when they come to form *State governments for themselves*, had the *sole right to determine for themselves* whether they would have slavery or not.

Mr. STEPHENS. The gentleman has not answered my question. I ask again whether in 1848, when the proposition was sent down from the Senate proposing to extend the Missouri line to the Pacific coast, would the gentleman from Tennessee have voted for it?

Mr. ZOLLICOFFER. Well, Mr. Clerk, I will answer the gentleman in this way—

Mr. STEPHENS. I cannot give the gentleman my time except for a direct answer to my question. I want to know whether, when Congress was providing governments for the Territories acquired from Mexico, he would, if he had been here, have voted for the extension of the Missouri line through those Territories or not?

Mr. ZOLLICOFFER. The time has been, Mr. Clerk, when the great body of men at the South, for the sake of choosing what they considered the

smaller of two evils, had fallen in with this Missouri compromise line; but, sir, my own opinion is, that had I at that time occupied a seat upon this floor I should have felt it to be my duty to investigate the subject with care, and to vote deliberately upon that investigation; and that I should have voted to *sustain the principles recognized in the compromise measures of 1850.*

Mr. STEPHENS. My question is, would the gentleman have voted for the Missouri compromise line at the time I have stated?

Mr. ZOLLICOFFER. My answer is, that I would have voted in accordance with the principles of the compromise acts of 1850, *to leave the people of the Territories to determine the question of slavery for themselves*, when they came to form a State government.

Mr. STEPHENS. The gentleman said he would give me a direct answer. He has not. Now I wish to put to the gentleman from Tennessee another question, that is, whether when those southern men he has spoken of, before they got the principles of 1850, now carried out in the Kansas bill, chose the less instead of the greater evil, as he has said—when every man from Tennessee, every man from Georgia, every man from South Carolina—in a word, every man, Whig and Democrat, south of Mason and Dixon's line, voted for that measure, were they acting upon a *theory* more dangerous to the South than Abolitionism itself?

Mr. ZOLLICOFFER. The principles of 1850 and of the Kansas-Nebraska bill were then urged, and are as old as the Constitution. I repeat what I stated at the very outset, and I do not mean to be understood as saying that those gentlemen were less patriotic in their motives than those who understood, as the gentleman from Georgia now understands, the principle of non-intervention in the Nebraska and Kansas bill, or that their theory was more dangerous than Abolitionism itself; but I say, nevertheless, that the theory, whoever may entertain it, that the power exists in the Federal Government to determine forever, for the States to be formed out of the Territories of the United States, the fundamental constitutional principles of those States—to determine whether slavery shall exist there or not—is a theory more dangerous to the South than the overt movements of Abolitionism itself.

Mr. STEPHENS. I am here to defend that theory so far as my action under it is concerned. I say it was a wise theory, looking to the peace of the country under the circumstances. I say it was a just theory so far as it was founded on the principle of a fair division of the Territory, but it was not, nor is now, any favorite theory of mine. I preferred another—the principle established in 1850. Still, there was nothing so aggressive in it as that the country might not have been satisfied with it if it had been abided by. I acted on it only as an alternative. Nor do I hold that the whole South in adhering to it were more dangerous to themselves than Abolitionism itself. Nor, sir, do I hold that a division of territory, as stated, violates the Constitution of the United States. This I say, while I also maintain that the Constitution gives to Congress no original or substantive power to prohibit slavery in the Territories of this country. The gentleman cannot find, in any remarks that I have ever



made, that I have advocated the existence of any such power. I never have entertained any such opinion. I have always warred against it from the beginning.

I have always maintained that this *theory* of the creation of Territorial governments was outside the contemplation of the Constitution. It rests upon a power resulting from the acquisition of territory which the Constitution never contemplated. But when acquired, the duty devolves upon Congress either to govern it or to provide a government for it. And in governing or providing governments, Congress has no power, either express or implied, direct or incidental, to pass any law which would deprive any portion of the people of the several States of their right to a just and fair participation in the public domain. But a law or regulation, looking to a disposition of the public domain as common property, based upon the principle of division between the two sections, disagreeing, as they do, upon the subject of slavery, I hold, may be constitutional, or, at least, not violative of it. While the exercise, therefore, of such power by a general exclusion would be wholly unconstitutional, yet, under circumstances qualified as I have stated, it might be properly exercised. As I understood the honorable gentleman from Illinois [Mr. Richardson] to hold, the other day, the exercise of this power may or *might* be perfectly consistent with the Constitution, just, and proper in *one instance*, and wholly inconsistent with it, unjust, and improper in another.

Mr. ZOLLICOFFER. Mr. Clerk, I desire to say, that if I have not done justice in every respect to the position taken by the gentleman from Georgia, on a former occasion, I desire now to do so. I sent, some fifteen minutes ago, to the Congressional Library for a copy of the Congressional Globe, containing the remarks of the gentleman from Georgia, to which I have referred, upon which the statement I have made, as to his position, was predicated. I have not yet received it. I hope to receive it presently, and then I will give to the House the record upon which I based my opinion.

Mr. STEPHENS. The gentleman misapprehends me if he supposes that I ever held the idea or opinion that Congress has the general or unlimited power to exclude slavery from the Territories of the United States. Never, sir; but I have held, and I do hold now, that the power in organizing governments and disposing of the common territory can be properly and constitutionally exercised on the principles of a fair division. The gentleman seems to belong to a class of men who argue that if Congress can exclude slavery from a part, on the principles I speak of, it could therefore exclude it from all the Territories.

Mr. ZOLLICOFFER. That is the position of the gentleman's candidate for the speakership, as announced last Friday in his place, that if you can exercise power over a part of the Territory, you can over the whole of the Territory.

Mr. STEPHENS. No, sir. I indorse every word that the gentleman from Illinois has said on this subject. He says that he voted for the extension of the Missouri compromise line, and that he did not think in doing so that he was violating the Constitution. I think so too. He

says that the exercise of the power, other than by compromise, or a fair division of territory, would be *wrong and unjust, and violative, if not of the letter, at least of the spirit of the Constitution*. So I say too. And why would it in my opinion be unconstitutional to exclude slavery from all the Territories? The Constitution is silent on the subject of the government of the Territories. I have always maintained that the power was an incident and resulting one; and, as I look on all resulting powers, this one is to be fairly and justly exercised. When exercised in that way, I hold that it is constitutional. If not, it is wrong and unjust, and tantamount to a violation of an express provision of the Constitution. It is a violation of the spirit of the Constitution, because of its injustice.

Mr. ZOLLICOFFER. If Congress has the power to exclude slavery from one half of the Territory, has it not the power to exclude from all the Territory?

Mr. STEPHENS. No, sir. That is the point. It would be unjust; and for that very reason no such power of general exclusion could be properly exercised. The Government of the United States, under the operation of the revenue laws, and not within the purview or contemplation of any of the granted powers of the Government, acquired a surplus revenue. It was never contemplated by the Constitution that such a fund should be amassed. A distribution of the fund fairly and justly between all the States, I hold, was perfectly constitutional. But suppose the North had said, "Here is a case outside of the Constitution. There is not a word in that instrument on the subject. The fund has been unexpectedly acquired under the operation of the Government; but it shall not be divided among all the States equally; it shall be taken exclusively by those where slavery does not exist; that no slaveholding State shall touch a dollar of it." Would that have been constitutional?

This is an apt case in point of illustration, for the Constitution is silent on the subject. It was never contemplated by that instrument that a surplus fund should be accumulated; but such a fund did accumulate and may again. The power of distribution was a resulting power, and, when fairly and justly exercised, was constitutional. I do not now discuss the expediency of the distribution, but the constitutionality of it. I do not doubt that it was constitutional if the distribution was fair and just, but it would have been nothing short of usurpation for the North to have taken the whole of it. That is my answer, and so with the Territories. Here was an acquisition of public domain, which the Constitution never looked to or provided for, made by the common treasure, by the common blood of northern men and southern men—men from all sections contributed in acquiring it. In some States slavery existed, in others it did not; and was it not right that the people of all the States should have an equal enjoyment of, or a just and fair participation in, this public domain? Just as in the case of the surplus fund; when that fund came to be divided, it would have been monstrous, and unjust, and violative of the Constitution—of its spirit, if not of its letter—if the distribution had not been an equal and a fair one.

Mr. ZOLLICOFFER. I have at length been

able to obtain, and will read the extract on which I based my opinion of the gentleman's position. My object in doing so, at this time, is merely to show that I had no purpose to misunderstand or misrepresent him. I call attention to the following extract of a speech delivered by the gentleman in 1848, on the floor of this House.

"I have no objection to compromising the question, but I have only two plans of compromise; one is, a fair division of the territory by fair and distinct lines, by which every one may know exactly to what extent his rights will be protected. I care not much whether it be by an extension of the Missouri line, or whether it be by adopting as a line one of the mountain ranges, giving the South all on this side and the North all on the other. I am, however, rather in favor of the latter; but shall insist on some fair and just division. That is one plan of compromise I shall favor; and if I cannot get that, I have but one other to offer, and that is, to reject the Territory altogether. Let us keep our money which is to be paid for it, and let Mexico keep her provinces and her people."

Mr. STEPHENS. Well, sir—

Mr. ZOLLICOFFER. Let me proceed.

Mr. STEPHENS. Show in what I differed then from what I now state. Why do you bring my records to back what I now say?

Mr. ZOLLICOFFER. I do not say that it differs from what the gentleman has said in the last few minutes; but there does seem to me to be some difference between it and the non-intervention banner which he so boldly flaunted on yesterday.

Mr. STEPHENS. Not at all, sir. Permit me to repeat just here that my original view was, that Congress should not interfere or intervene against us; that Congress should leave the common territory free and open to colonization by all alike. This was what I desired; this is what we have now got. But when that speech was made, this hope was a foregone conclusion; the hand of Congress against us could not be stayed. None of us expected, if the territory should be acquired, that intervention against us by Congress in some way or other could be prevented. We were voted down. I, however, was still willing, as an alternative, to compromise on the old principle of division; but if I could not get even that, then my last alternative was not to take the territory. The gentleman from Illinois [Mr. RICHARDSON] and the Senator from Illinois, [Mr. DOUGLAS,] and a few more, not exceeding half a dozen, I believe, were the only gentlemen from the entire North who voted to give us any showing at all—men who seem to be now hunted down. While the gentleman is reading me a lecture in reference to the honorable gentleman from Pennsylvania, to which I will reply, his whole argument seems to be to hunt down Mr. RICHARDSON.

Mr. ZOLLICOFFER. I think that assumption is a little unkind to me. I feel that such is not my wish; but that, when southern men seem to be hunting down sound and national men of the North, who stand with me, both sides of the question should go before the people.

Mr. STEPHENS. Let me go on, if you please.

Mr. ZOLLICOFFER. I will say that I now understand the gentleman's position to be somewhat different from what I supposed. I understand that, as a matter of compromise, he was willing to see this geographical line run to the Pacific; that slavery should exist on one side, and be excluded from the other. I now understand

him to say that he believes that Congress has power to make this disposition.

Mr. STEPHENS. I do.

Mr. ZOLLICOFFER. And I understand him at the same time to say that, while Congress has power to prohibit slavery from one half of the territory, it has not the power to prohibit it from three quarters. This, I must confess, to me is inexplicable.

Mr. STEPHENS. It may be so to the gentleman; it does not seem so to me. I say that there is no violation of constitutional power to divide fairly and justly, but it would be violative of every just principle of the Constitution to take the whole. If that is inexplicable to the gentleman, I suppose it will not so appear to others. I suppose that this was the view of all the gentlemen from the South acting with me on the extension of the Missouri line; at least, it is the ground upon which I stood.

Now, Mr. Clerk, I am willing that the gentleman shall search all my records, and bring them up here and read them. I think that, upon this point, the gentleman will find that I have never changed sides, or positions, or opinions. If I were to do it, I would not hesitate to avow it; I wish the gentleman to know that. But I wish the country also to know that my opinions upon this point, so far as I am a proper judge of them, have been the same since I first came to Congress, and just such as I entertained before I came here. The position of the South from the beginning was, that Congress ought not to interfere or intervene against us upon this subject. That is my position, and always was, as an original question. That was the southern ground anterior to the Missouri restriction in 1820. That was only supported by southern men as an alternative. It was when the South was voted down by the North, and when the South was about to lose the whole of the territory, that she consented to the principle of a division; and I say that Congress has the power, in my opinion, to divide fairly and justly, but no power to give the whole, exclusively, to one section, just as in the case I have put about the surplus revenue.

Now, sir, the gentleman remarked that my allusion to the gentleman from Pennsylvania [Mr. FULLER] was unkind. I disclaimed yesterday—I disclaimed most emphatically yesterday—and I do again to-day, any intention of alluding to the gentleman from Pennsylvania in an unkind spirit. I did it because I thought the occasion required it; I thought it due to the progress of our cause here. I felt extremely gratified at the announcement of the gentleman's opinions, and so I said then. I say now that my intention was not to cut down the gentleman from Pennsylvania at all, but it was to strengthen him and to strengthen his friends and our cause at the North—it was to give our friends every assurance and induce them to stand firm; for we have evidence now that if they do so, the great principles established in 1850, and carried out in the Kansas-Nebraska bill, will ultimately prevail in this country, notwithstanding the clamor at the first elections against it.

Mr. ZOLLICOFFER. I am happy to hear that I misapprehended the purpose of the gentleman; but when he, by implication, stated that the gentleman from Pennsylvania had seen new light—



Mr. STEPHENS. I did not say that he had seen new light.

Mr. ZOLLICOFFER. Well, that light had dawned upon him.

Mr. STEPHENS. I did not say that.

Mr. ZOLLICOFFER. The impression upon my mind was that the gentleman did imply this in what he said.

Mr. STEPHENS. No, sir. What I said was—

Mr. ZOLLICOFFER. Well, Mr. Clerk, may I be allowed to ask the gentleman, in order that I may be able to understand his position—for I have some difficulty in understanding him—whether he believes the Missouri compromise line to have been constitutional or unconstitutional?

Mr. STEPHENS. I believe that it was constitutional.

Mr. ZOLLICOFFER. Well, that is what I understood his position to amount to at first.

Mr. STEPHENS. I believe it was founded upon the principle of a fair division of the territory as it was then understood, and as such it violated no constitutional provision. I ask the gentleman from Tennessee now again, whether he would not have voted for it if he had been here?

Mr. ZOLLICOFFER. Mr. Clerk, I can only repeat what I attempted to say in reply to the same question a few minutes ago. Had I been a member of the House at that time, my opinion is, that I would have done what it has been my uniform habit to do—that I would have investigated every question upon which I was called to vote upon its constitutional principles; and my opinion is, that upon an investigation such as I gave to this question in 1850 and in 1854, I should have come to the conclusion that there was nothing in the Constitution authorizing the Federal Government to exercise the power of prohibiting the new States to be formed out of the territory of the Union from adopting such permanent institutions as they chose to adopt when they came in as States. I should, therefore, have held that the Missouri compromise was in derogation of the Constitution; that is, that there was nothing in the Constitution authorizing such an act; and that inasmuch as the power is claimed upon that clause of the Constitution which authorizes Congress to make “all needful rules and regulations” for the territory and other property of the Union, and inasmuch as a regulation permanently prohibiting the States to be formed out of that territory from acting for themselves when they took on themselves sovereignty, was not a “needful rule” that Congress had *no such power*. That is my present opinion.

Mr. STEPHENS. The gentleman, then, was opposed to it, and would not have voted for it. I understand him to say that he would not have voted for the Missouri compromise.

Mr. ZOLLICOFFER. For the third time, I will endeavor to make myself definitely understood.

Mr. STEPHENS. I have asked the question whether the gentleman would have voted for the extension of the Missouri compromise. The gentleman has been several times upon the floor, and has not answered that question.

Mr. ZOLLICOFFER. My opinion is, that,

had I been a member of that Congress, I would have investigated the question, and that, having investigated it, I would have come to the conclusion that the Missouri compromise was not authorized by the Constitution; and I would, of course, have *voted against it*, and sustained the *principle incorporated in the compromise bills of 1850*. That is what I mean to say, and have, in substance, several times repeated.

Mr. STEPHENS. Then I understand the gentleman to say that, in 1848, he would have voted against the whole South, upon the principle that all the southern members of the Senate and of this body were more dangerous to the South than the Abolitionists themselves! After investigating and groping about and looking in the dark for a light, he would have come to the conclusion that Congress had no such power, and would have voted for the principles established in 1850. Sir, the principles established in 1850 were the principles of the South from the beginning. But when we were looking to an extension of the Missouri line, we had no hope of getting the principles of 1850. This Missouri line of division was sustained by the South only as an alternative all the time. The South took it in the beginning reluctantly. But the gentleman attributes to me, and those who thus sustained it, the doctrine that Congress has the general original power to exclude slavery from the Territories. Now, I have said, and repeat, I hold no such doctrine. On the contrary, I have said to this House and to the country everywhere, that if Congress were to exercise such power, I should be *for resisting it*. While I was willing to divide fairly in 1848, and while that was the only compromise I was for, and while I stood upon the same principle in 1850, I proclaimed to the country that if we did not get a fair division, if the North took the whole territory, I was for *resistance*. Now, I want to know where the gentleman is going to stand in such a contingency? He thinks, as I do, that such an exercise of power would be unconstitutional. Suppose a majority of this House should restore the Missouri restriction, and suppose it should pass the Senate, and receive the Executive approval, what are you going to do?

Mr. ZOLLICOFFER. The explanation which the gentleman has amplified to-day is the same which he made yesterday, and I am very willing that he should extend the explanation.

Mr. STEPHENS. The floor is mine, and I cannot yield it to the gentleman, unless he undertakes to answer my question.

Mr. ZOLLICOFFER. I certainly will.

Mr. STEPHENS. Suppose, I say, that the restoration of the Missouri restriction is established, what is the gentleman going to do? Suppose Congress does exercise the power to exclude slavery from the Territories—which the gentleman thinks is a violation of the Constitution—what is he going to do? What measure will he recommend to the people of the South? What theory of government is he going to act upon?

Mr. ZOLLICOFFER. I hold that my friend from Georgia has not the right to make up supposed cases, and put a catechism to me upon any wild imaginary hypothesis.

Mr. STEPHENS. The gentleman himself first commenced the system of catechising on supposed cases. He offered the resolution de-

claring that the opinions of candidates should be known, and followed it up by a long string of questions.

Mr. ZOLLICOFFER. Will the gentleman permit me to ask him a question?

Mr. STEPHENS. Yes, sir, a hundred of them; and I want you to answer mine.

Mr. ZOLLICOFFER. In what clause of the Constitution do you find the power authorizing Congress to make a fair division of the Territories?

Mr. STEPHENS. I do not find it at all.

Mr. ZOLLICOFFER. You have a higher law, then, than the Constitution?

Mr. STEPHENS. No, sir; I do not recognize any higher law than the Constitution. I have said before, that the government of the Territories was outside of the Constitution, springing from a resulting power incident to the acquisition, and that a fair division was not violative of it. That is what I said. Now answer my question, and I will answer you a dozen more, if you put them to me. My question is, what will you recommend your people to do, provided the restriction is restored, or Congress does exercise the power of excluding the people of the southern States from an equal participation in the Territories?

Mr. ZOLLICOFFER. I will do that which a southern man, loyal and true to the Constitution, should do when that question arises. I do not recognize the right of the gentleman from Georgia to interrogate me upon supposed cases which may never arise. Upon my record I will answer, and I hold him to his. When the time shall come, I shall be prepared to act as a southern and a national man, regarding the rights of every section of this Union. Upon the gentleman's own record I have interrogated him; but I have put no question to him as to what he would do in a supposed state of things which may never happen. When the crisis comes upon the country, I shall be prepared to take that course which a patriotic man, living in the South, and devoted to the principles of the Constitution, should take.

Mr. STEPHENS. As the gentleman has announced to the country who are the best friends and who are the worst enemies of the country, and that certain men of the South in the Senate and in the House, though patriotic in their motives, are worse enemies of the South than even the Abolitionists, I think it is but right that the South should be enlightened as to what his position would be, if the event I have supposed should happen.

Mr. ZOLLICOFFER. Do I understand the gentleman to maintain that the South assumes the power, and has used it in prohibiting slavery from the Territories?

Mr. STEPHENS. Southern Senators, and members of the House from the South, upon this floor, did vote for a division upon the line of 36° 30', and they did unanimously vote to extend it to the Pacific ocean. They did it reluctantly, as an alternative for some show of justice, but I take it for granted that every one of them did what he thought was right, under the circumstances, as the lesser of two evils; and that none of them thought they were violating the Constitution of the United States. But the gentleman says that those who thus voted were the worst enemies of the South.

Mr. ZOLLICOFFER. I have stated to the House, and I have repeated it again and again, that I did not say that those gentlemen who conceded the constitutional power of Congress to prohibit slavery, were less patriotic than those who construe the Constitution as I do. I did not say they were worse enemies of the South. I did say, that in my opinion the theory, that the Federal Government has the right to act for the States to be formed out of the Territories of the Union, in forming their permanent domestic institutions, is a theory most dangerous to the South, and the more dangerous when entertained by gentlemen living in the South.

Mr. STEPHENS. The gentleman will not answer my question. Be it so. The South can judge best who acts upon a theory most dangerous to her interests. My position was, and is this: I was willing to divide as an alternative only, but a majority of the North would not consent to it; and now we have got the great principle, established in 1850, carried out in the Kansas-Nebraska bill, that Congress, after removing all obstructions, is not to intervene against us. This is the old southern republican principle, obtained after a hard and protracted struggle in 1850; and I say, if Congress ever again exercises the power to exclude the South from an equal participation in the common Territories, I, as a southern man, am for resisting it. The gentleman from Tennessee does not say what he would do in that contingency.

The gentleman upon my left wishes to ask me a question.

Mr. HOWARD. I understand the gentleman to say that he was in favor of an equal division because it was just and fair. He says, the Territories, being outside of the Constitution, the giving the whole of them to one part, would be unconstitutional, because unfair.

Mr. STEPHENS. No, sir, I did not say "the giving to the one or the other," but "the giving exclusively to one."

Mr. HOWARD. Was it constitutional to take from either one of those parties the share they got upon a just division?

Mr. STEPHENS. No, sir; and that was not done: the North herself would not abide by the division contemplated. The idea on which the line was first established in 1820 was, that Missouri should come into the Union as a slave State, and that slavery should be excluded from all of the Louisiana purchase north of 36° 30', with a toleration of it south of that line, if the people chose. But at the next session of Congress, in 1821, the North voted Missouri out. She was denied admission on the terms of the act of 1820. The whole South was for it, and the almost entire North against it. The North would not stand by the compromise intended to give her an exclusive part. The Missouri line contemplated division, therefore, has virtually been a dead letter from that day to this; the North, or a majority of her representatives in Congress, repudiated it themselves: the South never did; they stood by it in 1821. And in order to see whether the North looked upon it, and considered it as a living principle, and not a repudiated offer to compromise upon the principle of division, the South proposed in 1847 and in 1848, as an alternative in lieu of the "Wilmot proviso" on the Oregon bill, to



abide in good faith by it. But this proposition, voted for by every southern Senator and Representative upon this floor, was voted down, again and again, by an overwhelming majority from the North. They thus repudiated it over the very territory which we acquired with Louisiana: the same repudiation was again and again carried in this House in 1850, when the South was unanimously for standing in good faith by the principle. Therefore the South never even got the admission of Missouri by their agreeing to take as an alternative a division on that line, and we were thrown back, in 1850, upon our original principles, which were, that there should be no congressional restrictions at all; but that the people settling the Territories from all sections of the Union should regulate this matter of slavery for themselves. That is the principle, as I understood, that the South stood upon in 1820, before the Missouri restriction was moved. It was the old republican principle; it was the principle that the Congress of the United States could not, on general principles, justify and rightly legislate for a people who are not their constituents; and I say to those gentlemen who call themselves Republicans upon this floor, that, in assuming that misapplied title, they do violence to every principle consecrated by the name they espouse.

The old republican idea of a representative Government, acted on in the beginning, was a very different thing from what you proclaim at this time. At the time of the formation of our Constitution, every State in the Union but one was a slave State; and were they not all republican States? The Constitution says, new States may be admitted; and the only thing you have to look at, upon the application of any for admission, is to see that its constitution is republican in its character, and you, gentlemen, who call yourselves Republicans now, say that if the Constitution tolerates slavery it is not republican, and, therefore, your fathers, your republican fathers, with slavery existing in every State but one, did not know the meaning of republicanism?

According to your interpretation of the term they acted upon an idea that would have excluded every one of the Old Thirteen from the Union but one—Massachusetts alone could have been a Union by herself upon your principles. Is it supposed that the other twelve would have disputed over the character of a State constitution, to be admitted into the Union, because it was not republican, if it only embraced the same principles of republicanism as their own? I state to these gentlemen who call themselves "Republicans," that they desecrate every principle consecrated by the name they bear, not only in this view, but they do so again when they undertake to set up that they are better judges of what is right in the Territories, and better legislators for the people of Kansas and Nebraska than the people of those Territories are for themselves. They do so when they set themselves up as the masters and judges of the proper institutions of the people of Kansas. The people of Massachusetts, and the people of the other northern States, not content with attending to their own business, set themselves up to be superior to the people of Kansas and Nebraska, and pretend that they can know their interests and determine them better

than they can themselves. Sir, I utterly deny the republicanism of their pretensions.

Mr. STANTON (interrupting) made an inquiry of Mr. STEPHENS, which the reporter did not distinctly hear.

Mr. STEPHENS. I am going to bring my remarks to a close; and I would ask the Republicans in this House, and particularly the gentleman from Ohio, who objects to my proceeding, to listen. I read, sir, what Mr. John Quincy Adams, who, I believe, was as violent an anti-slavery man in his sentiments as any man, said to the Abolitionists at Pittsburg, Pennsylvania, in November, 1843:

"As to the abolition of slavery in the District of Columbia, I have said that I was opposed to it—not because I have any doubts of the power of Congress to abolish slavery in the District, for I have none. But I regard it as a violation of Republican principles to enact laws at the petition of one people which are to operate upon another people against their consent. As the laws now stand the people of the District have property in their slaves."

Just upon the principle of its being anti-republican Mr. Adams would not legislate for the people of this District against their consent. He did not question the power.

Mr. STANTON, (interrupting.) I must make a question of order. I do not think it advisable, in a discussion of this kind, that a speech of this sort should go out to the country without there being an opportunity first to have it replied to.

Mr. STEPHENS. I shall not trespass on the time of the House more than a few minutes longer.

The CLERK. The Clerk would state that the House by unanimous consent permitted the gentleman from Georgia to proceed.

Mr. CAMPBELL, of Ohio. I ask my colleague [Mr. STANTON] to withdraw his objection and allow the gentleman from Georgia to proceed with his remarks. If we are to have a debating society here, I will seek an opportunity to reply to the gentleman, and therefore I desire that he shall be fully heard.

Mr. STANTON withdrew his objections.

Mr. STEPHENS. It is not my intention, Mr. Clerk, to trespass on the indulgence of this House, nor shall I do it. I have been brought into the discussion much further than I had any idea of when I rose. But there is one remark which I wish to make before concluding what I wished to say; and that is in regard to the doctrine of squatter sovereignty, of which several gentlemen have spoken. I think the gentleman from Virginia [Mr. CARLILE] spoke this morning—if I understood him aright—of the principle of squatter sovereignty embraced in the Kansas-Nebraska bill. Now, these terms of "squatter sovereignty" and "non-intervention" are words which have been differently understood by different gentlemen, and differently by the same gentlemen at different times, as I have stated. I wish to say that, as I understand "squatter sovereignty" now, and as I have always understood it, there is not a particle of it in the Kansas bill. What I understand by "squatter sovereignty" is the *inherent and sovereign right* of the people of the Territory settling on the common domain to establish and set up governments for themselves, without looking to Congress, and independently of Congress.

Now, sir, that idea was embraced by some

gentlemen in 1848 and 1850, as part of their doctrine of "non-intervention" by Congress; and with this view I call the attention of the gentleman from Tennessee, [Mr. ZOLLICOFFER,] who has read from my speech in 1850, when I used the term "non-intervention." Many persons embraced that with the other views in connection with that term which I have referred to. Against that doctrine, with that understanding of it, I always stood opposed, and am opposed now. There is not a single feature, not a particle of "squatter sovereignty" in the Kansas bill, on that idea. Why, sir, their whole organic law emanates from Congress. Their Legislature, their judiciary, every department and the whole machinery of their government proceeded from Congress; the inherent *sovereign* right of the people to establish a government independently of Congress is not recognized in a single clause of that bill. If gentlemen mean by squatter sovereignty this principle, I say to them that there is not a particle of it in that bill; and I am as much against it as anybody.

Mr. ZOLLICOFFER. Will the gentleman from Georgia allow me to ask him a question?

Mr. STEPHENS. Yes, sir.

Mr. ZOLLICOFFER. I would be pleased to know whether the gentleman from Georgia interprets the Kansas-Nebraska bill to give to the people, to the legislative body, of the Territories of Kansas and Nebraska the power to abolish slavery during the existence of the territorial government?

Mr. STEPHENS. I answer the gentleman. I think that the Kansas-Nebraska bill gives to the people of the Territory, *grants to them* all the power that Congress had over it, and no more.

Mr. ZOLLICOFFER. Do you believe that Congress had no power to abolish slavery in that Territory during its territorial existence?

Mr. STEPHENS. I think it would be unjust and a great wrong for Congress to exercise any such power.

Mr. ZOLLICOFFER. Do you think it would be unconstitutional?

Mr. STEPHENS. I think there is no power in the Constitution to do it, and it would be wrong from any resulting power, denying as it would an equal and just enjoyment of the public domain by all the people—and unjust, and tantamount to usurpation to do it. Sir, I was going to say that the gentleman holds that Congress has no such power—

Mr. ZOLLICOFFER, (interrupting.) Do you believe that Congress had the power at all?

Mr. STEPHENS. Hear me through. What I was going to say is, that all the power which Congress possessed over the Territories on this subject is, in this bill, given to the people. And the gentleman holds that Congress could not prohibit slavery. If so, the people then cannot. Now, what I hold is, that the Constitution is silent upon the subject. But any such act by Congress in the case supposed would be an act, in my opinion, of gross injustice, and would be tantamount to an open violation of any of the express provisions of the Constitution. All the power, however, which Congress had over the subject is granted to the people, and they have got none else. I say this, and that I voted for the bill with this understanding of its import,

and a determination that whatever the people of that Territory should do on the subject of slavery, whether their Legislatures should pass laws to protect it or to exclude it, or simply leave it without protection, I should for myself abide by their acts. I was for taking off an odious discrimination and an unjust restriction by Congress against the South, and leaving the question for those to determine who, going from all sections alike, were most deeply interested in it, according to the principles of the territorial bills of 1850.

Mr. ZOLLICOFFER. I do not wish to misunderstand the gentleman from Georgia; and I therefore ask him whether I am to understand him as saying that it would be wrong and unjust for Congress to prohibit slavery in the Territory; yet that it has the constitutional power to do so, and that Congress conferred that power upon the Territory?

Mr. STEPHENS. No, sir; the gentleman, it seems, wishes to make me say what I did not say. I never said that Congress had the power to prohibit slavery in the Territories.

Mr. ZOLLICOFFER. The gentleman from Georgia misapprehends me, if he supposes that I intend to represent him as saying what I did not understand him to say.

Mr. STEPHENS. Very well, then; do not make me say what I have not said.

Mr. ZOLLICOFFER. It seems, then, that I misapprehended the gentleman; but that certainly was my understanding of the purport of his answer to the question which I put to him.

Mr. STEPHENS. Well, then, the gentleman was not attending to what I did say, because the whole tenor of my remarks shows that, in my opinion, there is no direct, or distinct, or original power conferred on Congress by the Constitution to exclude slavery from any of the Territories, or any portion of them; but on the acquisition of territory, not contemplated by the Constitution, a fair division of the country *might be made* as I have stated, between the parties interested, by way of compromise. I mean to say, I do not think such division violates the Constitution; but in no other sense do I hold that Congress could constitutionally agree to the exclusion of slavery from any of the common territory, or any part of it.

Mr. ZOLLICOFFER. That I may not misapprehend the gentleman from Georgia, as it seems I have done, for I find it difficult to understand him, I must ask him another question. I understand him to say that in the spirit of compromise Congress has the power to abolish slavery in a part of the territory—say in one half of the territory. Now if Congress has the power to abolish slavery in half the territory, has it not also the power to abolish it in the whole?

Mr. STEPHENS. I have not used the word "abolish" in this connection to-day; but I say no to his question.

Mr. ZOLLICOFFER. Well, "prohibit!"

Mr. STEPHENS. Yes, sir. I have used that word, and exclude, and restrict. I now say distinctly that it does not follow, in my opinion, that because Congress could constitutionally provide for the exclusion of slavery over part of the territory on the principle of division I have been speaking of, that therefore the unlimited power exists to exclude it from the whole. I deny, in



*toto*, the existence of such unlimited or unqualified power in Congress on the subject.

Mr. TODD. Will the gentleman from Georgia allow me to ask him a question?

Mr. WASHBURN, of Maine, also made the same request at the same time.

Mr. STEPHENS. I will allow both gentlemen to put as many questions to me as they please. I will first hear the gentleman from Pennsylvania, [Mr. TODD.]

Mr. TODD. I understand the gentleman from Georgia to assume the position, that the power does not exist in the Constitution to determine what shall be the institutions of the Territories belonging to the United States. Now I desire to ask the gentleman wherein that power resides? Does it reside in the people of the Territories, or does it reside in Congress? If it does not exist in the Constitution, from whence does the gentleman derive it?

Mr. STEPHENS. I do not think it exists anywhere, while the territorial condition lasts, neither in the people of the Territory nor in Congress. The public domain, while it remains a Territory of the United States, is the common property of the people of the several States, to be disposed of by Congress, under the limitations of the Constitution, for the just and equal enjoyment or use of the people of all the States; and there is no general or unlimited power existing anywhere, either in Congress or the people of the Territory, or anybody else, to deprive any citizen of the United States from going there with his property, of whatever kind it may consist, so long as it is a Territory. I have as much right to go there with my property as the gentleman from Pennsylvania has with his; and the people of Georgia have as much right to go there with their property as the people of Pennsylvania have with theirs. The unlimited power to exclude slavery, and that is the idea I suppose the gentleman is upon, exists nowhere in my opinion.

The gentleman from Pennsylvania seems to be hunting for the power, and because he cannot find it in one place, he takes it for granted that it must exist in another. His logic is about as good as that of the man who undertook to prove that Columbus was not the discoverer of America; that this honor was due to some Norwegian navigators, who it was claimed discovered it I believe about the year 900, at any rate, several centuries before Columbus. The reasoning by which this conclusion was arrived at was, that a Norwegian vessel, about that time, set out from the coast of Norway, sailing west, which was never heard of afterwards; and the argument was, that those on this vessel must have gone to America, for if they did not where else did they go to? [Laughter.]

Mr. TODD. Do I understand the gentleman correctly? I understood him to say that he advocates the principle of the Kansas and Nebraska bill, because it is based upon the great republican principle of the right of the people to settle their own institutions for themselves.

Mr. STEPHENS. Yes, sir; on this subject.

Mr. TODD. I understand the gentleman to say that the people have not that right, and that Congress has not the power to clothe them with that right. Now, I want to know where this

great representative principle, of which the gentleman speaks, resides, and how it is to be exercised, if neither Congress nor the people possess it?

Mr. STEPHENS. It is to be exercised by the people when they form their State constitution. That is my view of how and when the power is to be properly exercised; that is what I conceive the old republican idea was.

Now, sir, I will hear the gentleman from Maine, [Mr. WASHBURN,] who desires to ask me a question.

Mr. WASHBURN, of Maine. I understood the gentleman from Georgia to say that he believed that Congress has no power to abolish slavery in the Territories, but that the power resides in the people; and again, that the people of the Territories have no power except that delegated to them by Congress. I understood the gentleman to lay down these two propositions. Now, the question I have to ask is this: if the people of the Territories have no power except that given to them by Congress, and Congress has no power to exclude slavery in the Territories, where do the people of the Territories get the power to exclude it there?

Mr. STEPHENS. The people have, in my opinion, the power to exclude it only in a State capacity, or when they form their State constitution. Then they get it where all the States get it. The people, in a territorial condition, are but new States in *embryo*: this latent power of *full sovereignty*, when they assume State form, then develops itself; as wings to rise and fly, though latent in the chrysalis, do nevertheless develop themselves in full beauty, vigor, and perfection at the proper time. But I have this further to say in reply to the gentleman from Maine, [Mr. WASHBURN.] That gentleman, and I suppose a majority of this House, hold that Congress has the full and absolute power to exclude slavery from the Territories. Well, sir, if Congress has such power it has conferred that power upon the people of Kansas and Nebraska. I hold that Congress has not such unqualified power; but if it has, as the gentleman believes, then the people of those Territories possess it under the bill. This is evident from the language of the bill itself.

"That the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect in the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the Act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of 6th March, 1820, either protecting, establishing, prohibiting, or abolishing slavery."

Now, sir, as I have stated, I voted for this bill, leaving the whole matter to the people to settle for themselves, subject to no restriction or limitation but the Constitution. With this distinct understanding of its import and meaning, and with a determination that the existence of this power

being disputed and doubted, it would be better and much more consistent with our old-time republican principles to let the people settle it than for Congress to do it. And although my own opinion is that the people, under the limitations of the Constitution, have not the rightful power to exclude slavery so long as they remain in a territorial condition, yet I am willing that they may determine it for themselves, and when they please. I shall never negative any law they may pass, if it is the result of a fair legislative expression of the popular will. Never! I am willing that the Territorial Legislature may act upon the subject when and how they may think proper. We got the congressional restriction taken off. The territories were made open and free for immigration and settlement by the people of all the States alike, with their property alike. No odious and unjust discrimination or exclusion against any class or portion; and I am content that those who thus go there from all sections, shall do in this matter as they please under their organic law. I wanted the question taken out of the Halls of national legislation. It has done nothing but disturb the public peace for thirty-five years or more. So long as Congress undertakes to manage it, it will continue to do nothing but stir up agitation and sectional strife. The people can dispose of it better than we can. Why not then, by common consent, drop it at once and forever? Why not you, gentlemen, around me, give up your so-called and so-miscalled Republican ideas of restoring the Missouri restriction, and let the people in the far off Territories of Kansas and Nebraska look after their own condition, present and future, in their own way? Is it not much more consistent with Mr. Adams's ideas of Republicanism for them to attend to their own domestic matters, than for you or us to undertake to do it for them? Let us attend to our business, and let them attend to theirs. What else keeps this House disorganized and suspends all legislative business? I wished, sir, in voting for the Kansas bill, and in carrying out in good faith the great principles established in 1850—that memorable epoch, the middle of the nineteenth century—and fixing them as the basis and rule of action on the part of the General Government in her territorial policy, to get rid of this disturbing question here, by referring it unrestrictedly, as far as I could under the Constitution, to the people. If they have not the power to settle it while a Territory, as a matter of absolute right—*ex debito iustitia*, I was willing, so far as I was concerned and had the power to do it, to give it to them as a matter of favor—*ex gratia*. I am willing, as I say, that they shall exercise the power; and, if a fair expression of the popular will—not such as may be affected by New England emigrant aid societies, or other improper interference, but the fair expression of the will of the hardy pioneers, who, going from all sections without let or hindrance, seek new lands and new homes in those distant frontier countries—shall declare, in deliberate and proper form under their organic law, that slavery shall not exist amongst them, and I am here at the time, I shall abide by their decision. I, as a member upon this floor, never intend to raise the question of their constitutional power to adopt such a measure. I shall never attempt to trammel the popular will in that case, although I may think

such legislation wrong and unjust, and not consistent with constitutional duty on the part of those who enact it. Yet it will be a wrong without any feasible remedy, so far as I can see. I am for maintaining with steadfastness the territorial bills of 1850—the principle of leaving the people of the Territories, without congressional restriction, to settle this question for themselves, and to come into the Union, when admitted as States, either with or without slavery, as they may determine. This principle was recognized and established after the severest sectional struggle this country has ever witnessed, and after the old idea, whether right or wrong in itself, whether just or unjust, whether constitutional or unconstitutional, of dividing the Territories between the sections, was utterly abandoned and repudiated by the party that at first forced it as an alternative upon the other.

The Kansas and Nebraska act carries out the policy of this new principle instead of the old one. The country, with singular unanimity, sustained the measures of 1850; and all that is now wanting for the permanent peace and repose of the whole Union upon all these questions, is an adherence to the measures of 1850, both "*in principle and substance*" as the settled policy of Congress upon all such matters. That the people of all sections will come ultimately, and that before long, to this stand, I cannot permit myself to doubt. Let us hear no more, then, of repeal. Let us organize this body upon a national basis and a national sentiment. Let us turn our attention to the business of the country which appropriately belongs to us. Yes, sir, the great and diversified interests of this truly great and growing country of ours, about which we talk and boast so much, and about which we have so much reason to talk and boast. Let us look to the fulfillment of the high and noble mission assigned us. Do not let the party watchwords of "liberty and freedom" for the black man, which some gentlemen seem always ready to repeat, cause you to forget or neglect the higher objects and duties of Government. These relate essentially to our own race, their well-being, their progress, their advancement. Let the inferior race in our midst take that position for which, by a wise Providence, it was fitted, and which an enlightened and Christian civilization in the different sections of our common country, may think proper to assign it.

Mr. Clerk, we hear a great deal now-a-days about Americanism—and by not a few of those, too, who call themselves, *par excellence*, Republicans. Now, sir, has America—with her hundreds of millions of foreign trade, and millions almost beyond count of internal and domestic trade—with all her incalculable resources of commerce, agriculture, and manufactures in a state of rapid development—has America, the asylum of the misruled, misgoverned, and oppressed of all climes—the home of civil and religious liberty—the light of the world and the hope of mankind, no higher objects to occupy our attention than those questions which, whatever may be their merits touching the condition of the African race in the several States and Territories, do not properly come within the purview of our duties to look after here?—questions, the discussion of which in this Hall can have no possible effect



---

but to create agitation, stir up strife, array State against State, section against section, and to render the Government, by suspending its legislative functions, incapable practically of performing those great and essential objects for which alone it was expressly created.

These views I submit to the considerate attention of all. I shall trespass no longer upon your indulgence. I thank the House for their kindness in hearing me. I must apologize for the time I have occupied the floor. I had no idea,

when I arose, of speaking ten minutes. I barely wished to say to the gentleman from Tennessee, [Mr. ZOLLICOFFER,] that those gentlemen from the South who had voted for the Missouri line, could not, because of such votes, be justly held or considered the advocates of the constitutional power of Congress to prohibit slavery in the Territories; and but for his extended reply, bringing out new matter, I should not have taken up the ten minutes allotted.

---

LIBRARY OF CONGRESS



0 011 897 857 2



